reject the goods even though he has not read the documents, so that he cannot strictly speaking be said to have waived the right to reject, since waiver requires actual knowledge of the facts giving rise to the right to reject. On the other hand, the buyer could still reject the goods after accepting the documents if the goods suffered from a defect which did not appear on the face of the documents (*Benjamin's Sale of Goods*, pages 927 and 1004 paras 1722 and 1850).

In the present appeal, the undisputed facts were that the tender documents clearly state the amount of 481.410 metric tons of palm oil shipped on "MT BOW SKY stowage 3 STB B/L No. PKL-RDM-1 dated March 29, 1984 in fulfilment of the contract". The agreed amount of consignment was 500 tons metric tons "2% more or less as the buyer's option to be declared at the time of vessel nomination". The allowable amount can be either 510 or 490 metric tons, no more and no less. There was therefore clear shortage of the amount which would have attracted the attention of the appellant or the direct purchaser on receipt of the telex documents, and to reject the same without any reasonable delay on the ground of short shipment if they really intended to exercise their right of rejection. As rightly noted by the arbitrator, it took the appellant eight days from the date of tender to inform the respondent that they were relying on their direct buyer whether to accept the tender or not, and fifteen days to inform the respondent of their rejection. Applying the principles stated above, we cannot see anything wrong with the arbitrator's conclusion that there was implied acceptance of the tender and/or a waiver of their right to reject the tender after such unreasonable and inordinate delay. It would not be fair or just to allow the appellant to reject the tender because by letting a reasonable time go by, the appellant has lost his right to reject (*Panchaud Freres S.A.* v. *Et. General Grain Co.*[2]). In our judgment, the judge did not err in holding that there was no error of law on the face of the arbitration award.

The appeal is dismissed with costs here and the court below.

Appeal dismissed.

Solicitors: *Mah-Kok & Din; Shearn Delamore & Co.*

TIMBALAN MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS. v. CHEOW SIONG CHIN

[S.C. (Abdul Hamid C.J. (Malaya), Lee Hun Hoe C.J. (Borneo) & Hashim Yeop A. Sani S.C.J.) December 10, 1986 & May 15, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 195 of 1986]

Constitutional Law – Liberty of person – Detention under Restricted Residence Enactment – Whether person detained entitled to an enquiry before orders were made – Whether grounds for detention are within scope of Enactment – Restricted Residence Enactment (F.M.S. Cap. 39), s.2 – Federal Constitution, art. 5.

The respondent had been arrested under an order made by the Deputy Minister of Home Affairs under section 2(i) of the Restricted Residence Enactment. The grounds for the detention were that as a registered dealer in commodity trading the respondent had cheated many investors by giving false promises and making false declarations resulting in the investors sustaining considerable financial losses. The grounds for the detention were served on the respondent and he was informed that he could appeal for consideration to the Deputy Minister. Representations were made on behalf of the respondent but were rejected by the Deputy Minister. Subsequently the Deputy Minister made another order under section 2(ii) of the Enactment requiring the respondent to reside in the town of Gua Musang in Kelantan for the period of three years from the date of the order. The respondent applied to the High Court for declarations that (1) he was entitled to an enquiry before the said orders were made; and (2) the grounds for his detention were not within the scope of the Enactment, Harun J. held that the respondent was entitled to an enquiry before an order can be made against him under section 2(ii) of the Enactment. He also held that the grounds for restricted residence in the case were within the scope, ambit and purview of the Enactment (see [1986] 2 M.L.J. 235).

The appellants appealed against the finding of the learned judge that the respondent was entitled to an enquiry and the respondents cross-appealed against the finding of the learned judge that the grounds for detention were within the scope, ambit and purview of the Enactment.

Held, allowing the appeal and dismissing the cross-appeal: (1) an enquiry by the Deputy Minister before he makes an order under section 2(ii) of the Restricted Residence Enactment is optional and for the purpose only of satisfying himself that there are reasonable grounds for believing that the respondent should have his residence restricted. The respondent is not entitled as of right to an enquiry before an order under section 2(ii) of the Enactment is issued against him;

(2) the learned judge was right in holding that the grounds for restricted residence in this case were within the scope, ambit and purview of the Enactment.

Case referred to:

(1) *Assa Singh* v. *Menteri Besar, Johore* [1969] 2 M.L.J. 30.

SUPREME COURT.

P.M. Mahalingam (Senior Federal Counsel) (*Mohd Rauff bin Nabi Box* (Senior Federal Counsel) with him) for the appellants.

Karpal Singh for the respondent.

Abdul Hamid C.J. (Malaya) (delivering the judgment of the court): The appeal was against the finding of Harun J. that the respondent detained under an order under section 2(i) of the Restricted Residence Enactment (the Enactment) was entitled to an enquiry before an order can be made against him under section 2(ii) of the Enactment. The cross-appeal by the respondent was against the finding of the learned judge that the grounds for his detention are not within the scope, ambit and purview of the Enactment. We allowed the appeal with costs and also dismissed the cross-appeal with costs. We now state our reasons.

First, some facts very briefly. The respondent was arrested under an order made by the Deputy Minister of Home Affairs under section 2(i) of the Enactment on June 21, 1984. The grounds for the detention were that as a registered dealer in commodity trading the respondent had cheated many investors by giving false promises and making false declarations resulting in the investors sustaining considerable financial losses. The grounds for the detention were served on the respondent. He was also informed that any appeal for consideration can be made by him within two weeks after receiving the grounds for detention (page 36 of the record). Representations were in fact made on behalf of the respondent but were rejected by the Deputy Minister. On August 27, 1984, the Deputy Minister made another order under section 2(ii) of the Enactment requiring him to reside in the town of Gua Musang in Kelantan for the period of three years from the date of the order.

In the court below the respondent sought for declarations that:

(1) he was entitled to an enquiry before the said orders were made; and

(2) the grounds for his detention are not within the scope of the Enactment.

The Enactment is a pre-Merdeka law but it was settled in *Assa Singh* v. *Menteri Besar, Johore*[1] that the Enactment is valid but must be read with such modifications as may be necessary to bring it into accord with the provisions of the Constitution in accordance with Article 162(6) of the Constitution. The Enactment empowers the executive to exile any person to any part of the Federation. Section 2 of the Enactment provides the various steps to be taken by the executive. As pointed by Suffian F.J. (as he then was) in *Assa Singh*, the Minister first considers written information and makes or causes to be made such enquiry as he may deem necessary. If it appears to him that there are reasonable grounds for believing any person is required to reside in any particular district, he then issues an order for the arrest and detention of such person. After the person is arrested and detained under the first order, the Minister then after such enquiry as he may deem necessary makes an order under section 2(ii) of the Enactment that from a date to be stated in such order the person would be required to reside in such district or mukim as may be specified in the order.

It would seem agreed in all the main judgments in *Assa Singh* that the arrest of a person under section 2(i) is no different from the arrest of a person who is alleged to have committed a crime and that his detention pending an order under section 2(ii) of the Enactment is no different from the remand in custody of an arrested person pending trial. What is in issue is whether an enquiry must be held before the second order under section 2(ii) is made against the person. Suffian F.J. came down with no uncertain terms that an enquiry after the arrest is optional (page 37). Gill F.J. dealt with the question whether there should be an enquiry before the issue of a warrant to arrest a person under section 2(i) of the Enactment but remained silent on section 2(ii) of the Enactment (page 44). In any case this question was not an issue before the Federal Court then. However, Ong C.J. in what was actually *obiter* said in his judgment that "the learned Solicitor-General concedes, I believe, that the applicant is entitled to an enquiry at which he would have full opportunity of making representations" (at page 36). This statement has actually created the uncertainty.

After the amendment to clause 4 of Article 5 of the Constitution by Act A354 which took effect from August 27, 1986, a person arrested under the Enactment no longer has the protection of clause 4 of Article 5 of the Constitution relating to production without unreasonable delay before a magistrate. But he still enjoys the protection under clause 1 and clause 3 of Article 5 of the Constitution, *i.e.* deprivation of his life or liberty only in accordance with law and his right to be informed of the grounds of his arrest and be defended by counsel

of his choice. The protection under clause 3 is the relevant one here. Clause 3 of Article 5 of the Constitution reads:

"(3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice."

It can be observed from the records that the respondent was informed of the grounds of his arrest and detention. It was also not disputed that the respondent did in fact consult a legal practitioner who made representations on his behalf. In other words, he was afforded the opportunity of being heard.

In our judgment, an enquiry by the Deputy Minister before he makes an order under section 2(ii) of the Enactment is optional and for the purpose only of satisfying himself that there are reasonable grounds for believing that the respondent should have his residence restricted. The respondent is not entitled as of right to an enquiry before an order under section 2(ii) of the Enactment is issued against him. It is also clear that in this particular case the requirements of clause 3 of Article 5 of the Constitution have been complied with.

As regards the cross-appeal, it is to be observed that the object of the Enactment is to maintain public order. The Enactment is a pre-Merdeka law which has proven its usefulness. On the point raised the learned judge said in his judgment:

"The Enactment indeed gives drastic powers to the executive to exile any person who wears a grey tie because the executive does not like him to wear a grey tie. It was, however, argued that as the allegation against the plaintiff is that of cheating under the Penal Code, he should be prosecuted in the criminal courts and therefore the Enactment should not be used against him. It is not for the court to fathom the thoughts of the Minister. The Enactment does give him the power to restrict the plaintiff on the grounds stated because the ground stated is reasonable, that is to say, a cheat should not be allowed to cheat innocent people. It would not be a reasonable ground, if the Minister had stated that the order was made because the plaintiff wore a grey tie. I accordingly hold that the grounds for restricted residence in the instant case are within the scope, ambit and purview of the Enactment."

With respect, we agree and accordingly dismissed the cross-appeal.

Appeal allowed; cross-appeal dismissed.

Solicitors: *Karpal Singh & Co.*

KEDAH KELANG PAPAN SDN. BHD. v. HANSOL SDN. BHD. (TEKNIBINA ADVISORY SERVICES SDN. BHD., GARNISHEE)

[A.C.J. (Lim Beng Choon J.) December 28, 1987]

[Alor Setar – Civil Suit No. 24-17-87]

Civil Procedure – Garnishee order – Money earned by judgment debtor for work done retained by garnishee as retention money – Whether money retained a debt due and owing by garnishee to judgment debtor and capable of being garnished by judgment creditor – R.H.C. 1980, O.49 r.1.

The judgment creditor was the plaintiff in a civil suit and the judgment debtor was the defendant in that case. After obtaining judgment in his favour, the judgment creditor applied to court to claim from the garnishee certain sums of money totalling $101,716.51 which the garnishee owed the judgment debtor under a building contract.

The issue was whether the sum of $101,716.51 could be attached under Order 49 rule 1 of the Rules of the High Court 1980. The Senior Assistant Registrar made the garnishment order absolute. The garnishee appealed.

Held, dismissing the appeal: (1) no garnishee order can be made unless the person, at the time when the order is made, is indebted to the judgment debtor. It is not enough to show that it is very probable that there soon will be a debt;

(2) a debt, legal or equitable, can be attached whether it be a debt owing or accruing. A debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation. The words "or accruing" in Order 49 rule 1 are intended to apply to cases in which there are debts owed at the present time but payable in the future. An accruing debt, therefore, is a debt not yet actually payable but a debt which is represented by an existing obligation;

(3) in the instant case, the sum of $65,801.98 retained by the garnishee was in effect a fixed sum which had already been earned by the judgment debtor. In other words, the retention money was carved out of the contract price of that part of the work which had already been done by the judgment debtor and thereby they had earned the money arising from the carrying out of such work. There could not, therefore, be any dispute that the sum retained represented a debt due from the garnishee to the judgment debtor, albeit payable after the expiry of the defective liability period;

(4) in garnishing proceedings, the law is concerned only with any cross-claim or cross-debt existing at the date of the attachment and not a cross-claim or cross-debt that may come into existence some time in the future, however likely it may arise. In the instant case, whatever cross-claims the garnishee may have against the judgment debtor in respect of defective works which may arise subsequently did not represent a cross-claim or cross debt existing at the date of the attachment;